

NOMINATION OF JEANETTE J. CLARK

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF JEANETTE J. CLARK TO BE AN ASSOCIATE JUDGE OF
THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

MARCH 5, 2002

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NOMINATION OF JEANETTE J. CLARK

TUESDAY, MARCH 5, 2002

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:33 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Richard J. Durbin presiding.

Present: Senator Durbin.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. This hearing will come to order. Good afternoon, welcome to everybody. The Senate Committee on Governmental Affairs holds a hearing today to consider the nomination of Jeanette Clark to be an Associate Judge of the District of Columbia's Superior Court.

On November 29, 2001, Jeanette Clark was nominated by President Bush to fill a vacancy created by the death of Judge George W. Mitchell. Ms. Clark is currently the Associate General Counsel in the General Law Section of the Washington Metropolitan Area Transit Authority, Office of the General Counsel. She has been with WMATA for 16 years.

Before assuming her current position she served as Assistant General Counsel from 1986 to 1992. She held two assignments as Special Assistant to the General Manager, and as Associate General Counsel in the civil litigation section of the Office of General Counsel at WMATA from 1992 to 1996.

Prior to her work at WMATA, Ms. Clark was an associate at Steptoe and Johnson and a law clerk at the District of Columbia Office of Employee Appeals.

She received her B.A. from Trinity College in Washington, DC in 1970 and her J.D. cum laude from Howard University Law School in 1983.

I am certain this is a very special day for you, Ms. Clark, as you contemplate your next step in your legal career.

Ms. CLARK. Yes, it is, Senator. Thank you.

Senator DURBIN. I understand that you have some family members present whom I have had a chance to meet. If you would be kind enough to introduce them at this time.

Ms. CLARK. Thank you. With me today is my mother, Margaret Jackson; my husband, Leroy Clark; my uncle, James Rippey. I also have a host of friends and members of my Metro family who are with me today: Cynthia Mabry; Harold McDougall; the General Counsel, Cheryl Burke; the Principal Deputy, Carol O'Keefe; the

former General Counsel, Bob Polk; Katrina Wiggins, the Director of Human Resources; Mable Chu; Sonia Bacchus; Mitilda Broadnax; Kerslyn Featherstone; Camilla Rawlings; Janice Tolliver; Bill Caldwell; Robin Smith; Mark Sullivan; Tom Dorrier; Gerry Stief; Camillia Hogan; and Akisha Green.

Senator DURBIN. My only question is: Is Metro still running? [Laughter.]

I would like to welcome my friend and former colleague in the House, Congresswoman Eleanor Holmes Norton of the District of Columbia, who is here to offer a few words of introduction on behalf of Ms. Clark. Congresswoman Norton.

**TESTIMONY OF HON. ELEANOR HOLMES NORTON, DELEGATE
IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you very much, Mr. Chairman. It is indeed a pleasure for me to introduce to you Jeanette Clark, a native Washingtonian, who has been nominated by President Bush to serve on our Superior Court here in the District of Columbia.

I have known Ms. Clark for a long time, but in spite of that, Ms. Clark has been nominated.

Ms. Clark clerked for a Superior Court judge who is now on the Court of Appeals when she graduated cum laude from Howard University Law School. She knows that court well, therefore. It is her professional background that so well qualifies her to serve as an associate judge of our trial court.

She has been an associate at a major downtown law firm and, as you have indicated, has spent most of her legal career at WMATA, the Washington Metropolitan Area Transit Authority, although she was also for a brief time Deputy General Counsel of the D.C. Housing Authority. She rose to the rank of Associate Counsel at WMATA. Their loss is the gain of our Superior Court.

The honors that Ms. Clark received there, I think, show how well she was regarded at WMATA, including employee of the year for independent offices. She has given liberally of her time and effort to our own bar association, as well as to the board of trustees of her college, also located here in the District of Columbia, Trinity College.

In fact, we are particularly proud of Ms. Clark because she is a D.C. product. She is a product of our public schools, a graduate of McKinley High School, went to college and law school here. I am very pleased to recommend her to you, Mr. Chairman.

Senator DURBIN. Thank you very much, Congresswoman Norton.

I recalled, as you were giving the introduction, one of my favorite statements by Bill Cosby at a commencement address, when he looked out across the graduates and said some of you are graduating summa cum laude. Some are graduating magna cum laude, some cum laude, and some thank you, lordy.

Ms. NORTON. That, sir, is not Ms. Clark.

Senator DURBIN. I was in the last category. I appreciate your strong endorsement of your appointment and I know you have a lot of other commitments. Thank you for joining us this afternoon, Congresswoman.

Ms. NORTON. Thank you, Mr. Chairman.

Senator DURBIN. Ms. Clark, it is customary in this Committee to swear in witnesses. If you will please stand and raise your right hand, do you swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. CLARK. Yes, I do.

Senator DURBIN. Thank you. Let the record indicate the witness answered in the affirmative.

If you would like to make some opening remarks?

TESTIMONY OF JEANETTE J. CLARK¹ TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Ms. CLARK. Thank you, Senator. I would just like to thank many people. Mostly I would like to thank the D.C. Judiciary Committee for sending my name as a candidate to the President, and the President for nominating me, for the Senate staff for working so diligently and consistently with me through this phase, and also for the Senate for scheduling this hearing today.

I am just privileged, thrilled, and honored to be here today to at least have the Senate consider me for another step of public service. I feel extremely humbled by this occasion. Thank you.

Senator DURBIN. Thank you. If your rulings are that brief and to the point, you are going to be a very successful judge.

Before I was elected to Congress, many years ago, I practiced in the Federal courts and State courts of the State of Illinois, and I am envious of your confirmation hearing and the term that you are about to embark on. Since I moved from the House with a 2-year term to the Senate with a 6-year term, I cannot imagine a 15-year term.

But there comes a time that a certain concern arises about the temperament of judges. And some have characterized it as black robe-itis when a judge reaches that lofty pinnacle and then proceeds to gaze down at the people who assembled below. I just wondered if you would comment on this question of judicial temperament and how you think it has an impact on the administration of justice and law?

Ms. CLARK. I think it is a very important component of a judge to have the proper temperament. I feel that judges are public servants, that they serve the people of the District of Columbia, that service should be taken very seriously because it is a very serious responsibility. Along with that responsibility comes an obligation on the part of the judge to treat people with dignity and respect. And that respect should see itself in the form of the demeanor that the judge carries while he is on the bench, as well as respect in terms of whether they are professional or non-professional, whether or not they start their court on time, whether they come to court prepared, they have read all the papers that have been submitted, and that this, too, furthers the administration of justice.

Senator DURBIN. Several years from now, when you are confirmed and having served as judge, what do you hope that they will say about you, having seen other judges in service on the bench?

¹ The biographical and professional information appears in the Appendix on page 8.

Ms. CLARK. I would hope that they would say that I have been fair to the litigants, that I have been prepared when people have come to court, I have taken this role very seriously, that I have the view that I am a public servant, and I am not apart from the people.

Senator DURBIN. In your experience, working as a clerk and as an attorney, can you point to any judges that you have appeared before that you specifically admire?

Ms. CLARK. I would like to, first of all, say that the judge that I clerked for, Judge Warren R. King, who is very saddened that he is not able to be here today but he had a death in his family and had to leave. The funeral took place today and it was out of town. I certainly had a lot of respect for him and learned a lot about what a judicial temperament should be and how a judge comes to court and be very prepared.

I was also extremely impressed by the temperament of Judge Penn over at Federal Court and the diligence in which Judge Joyce Hens Green prepared all of her materials in some very complex civil litigation cases that I had to handle on behalf of WMATA.

Senator DURBIN. Do you detect any conflict of having a law professor in your family?

Ms. CLARK. No, I do not, Senator. And if there is ever a conflict, I would certainly check the Code of Judicial Conduct.

Senator DURBIN. I did not mean that in ethical terms. I always have this memory of my law professors and the great homage that we paid to them. And being a judge and dealing with a law professor on a daily basis is a challenge for anybody.

Ms. CLARK. I agree.

Senator DURBIN. I am sure you will rise to that challenge.

In your work at WMATA, what areas have you focused on?

Ms. CLARK. Civil litigation. I have had—probably all of the years I have been there I have done some civil litigation. In more recent history I have done less. But I have also concentrated on basically third-party liability, government contracts. I have done some real estate transactional work. In employment law, I did a significant amount of work in that area.

Senator DURBIN. Do you anticipate in this capacity having a criminal docket to face, as well?

Ms. CLARK. Yes, I do.

Senator DURBIN. Is this an area where you feel like you are going to have to refresh yourself in terms of things that you have learned or might have experienced years ago?

Ms. CLARK. Yes, I certainly think so, and I am prepared to do that. When I first came to WMATA I did not know how to try a case. So I do not believe that the learning curve will be difficult for me. I, most recently, in 1998, took the Maryland Attorney's Exam where there was a significant amount of criminal law, criminal procedure, in that exam for attorneys taking it.

Senator DURBIN. Have you taken cases to jury?

Ms. CLARK. Yes, I have taken about 26 cases to jury.

Senator DURBIN. Good for you.

Ms. CLARK. And about 16 or 17 on summary judgment.

Senator DURBIN. I used to call myself a trial lawyer and I could count on one hand the cases that went to jury. There are not that many that would.

Let me ask you about the jury system itself, in terms of your dealings. It has been on the civil side?

Ms. CLARK. Yes, exclusively.

Senator DURBIN. What have you learned in dealing with juries that might be instructive? There are some people who are critical, in fact articles that were recently written, about doing away with civil juries. What are your thoughts about that?

Ms. CLARK. I believe that the people should be a part of the process and that it is incumbent on the court and the parties to make certain that the evidence is presented that would be admissible and for them to make a reasoned finding.

Senator DURBIN. The argument, I think, has been made that many questions are just too complicated for the average person to grasp. What has been your experience?

Ms. CLARK. I think that they generally grasp everything, especially with the help of expert witnesses and proper examination by counsel, and sometimes the court.

Senator DURBIN. Good. I have three questions I am required to ask each nominee which I will ask you at this point for the record.

First, is there anything you are aware of in your background of interest with the duties of the office to which you have been nominated?

Ms. CLARK. No.

Senator DURBIN. Do you know any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. CLARK. No, I do not.

Senator DURBIN. Do you know of any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Ms. CLARK. No.

Senator DURBIN. I hope that you and all in attendance will conclude the brevity of this hearing is not a demonstration of a lack of interest. It is a demonstration of the abundance of quality which you bring to this nomination. You have been thoroughly vetted. You have gone through more forms to fill out than you thought you ever would have to. A lot of people have asked a lot of questions. My staff and I personally had a chance to review them and I think you are an excellent nominee.

I look forward to seeing your name come to the floor very quickly and seeing you don a black robe very quickly, as well.

Ms. CLARK. Thank you, Senator.

Senator DURBIN. Thank you and your family for joining us today. The next step in the process will be the prompt consideration of your nomination at full Committee markup in the very near future, and then report to the full Senate for final action.

And with that, the hearing is adjourned.

[Whereupon, at 2:47 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF SENATOR BUNNING

Thank you, Mr. Chairman.

Today we have before us Jeanette Clark, who has been nominated to serve as an Associate Judge to the D.C. Superior Court.

Ms. Clark was born and raised in the District of Columbia, and has spent much of her adult life working in the city.

She has a background in early childhood education, and I saw in her biographical information that she was a teacher for several years.

I have always said that teachers hold one of the most important jobs in our society, in not only teaching our children to read and write, but in inspiring and motivating them.

If confirmed, I hope Ms. Clark will be able to draw on her education background to help many of the District's children who are in need.

I look forward to hearing from Ms. Clark today, and gaining her perspective on what will possibly be her new job.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HON. PAUL STRAUSS, SHADOW U.S. SENATOR ELECTED BY THE VOTERS OF THE DISTRICT OF COLUMBIA

Chairman Durbin, and Members of the Senate Governmental Affairs Committee, I am Paul Strauss, the United States Senator elected by the voters of the District of Columbia, a position sometimes referred to as the Shadow Senator. I am also an attorney who practices law in our local courts.

In each of those capacities, I appreciate the opportunity to provide this statement on behalf of my constituents in the District of Columbia in support of the nomination of Ms. Jeanette J. Clark, to be an Associate Judge of the District of Columbia.

Ms. Jeanette J. Clark, is a native Washingtonian and an attorney with the Washington Metropolitan Area Transit Authority (WMATA). Perhaps equally significant to her legal experience, is the fact that she has been an educator in our District of Columbia Public Schools. By all accounts she has in her professional life achieved much accomplished success. Her hard work in the legal profession, her apparent high standards of conduct, and an extraordinary array of support for programs in education has made Ms. Clark an appropriate choice for judicial service. I expect that her history of service in both the legal and education institutions will serve her well on the bench.

As this Committee should know from my involvement with past nominations, I am not hesitant to call attention to deficiencies of a nominee. When issues of concern about a prior nominee arose in the past, I asked the voting members whose interest in the process was not as direct as mine, to vote on my behalf. Likewise, today I ask the Members of the Committee and the other voting Senators to vote on mine and DC's behalf to confirm Ms. Jeanette Clark.

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS
COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).

Jeanette Jackson Clark since May 1, 1993
 Jeanette Jackson Leonard from August 29, 1970 to April
 30, 1993
 Jeanette Jackson from March 2, 1948 to August 28, 1970
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).

I am a citizen of the United States.
3. Current office address and telephone number.

Washington Metropolitan Area Transit Authority
 ("WMATA")
 Office of the General Counsel, 2nd Floor
 600 Fifth Street, NW 2001
4. Date and place of birth.

March 2, 1948
 Washington, D.C.
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married. I was married to Leroy David Clark on May 1, 1993.
 Mr. Clark has been a law professor at Catholic University
 Law School, 3600 John McCormack Road, NE, Washington, D.C.
 20064, since 1981. He teaches Criminal Law, Criminal
 Procedure, Fair Employment Law, and Employment Law classes.
6. Names and ages of children. List occupation and employer's name if appropriate.

I have two stepchildren.

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

1. From August 1980 to May 1983, I attended Howard University Law School. I was awarded a J.D. degree, cum laude, in 1983.
2. From August 1977 to August 1978 I attended Catholic University Law School (CUA). (In 1970, I had been awarded a full scholarship to attend CUA.)
3. From the summer of 1971 until May 1972, I attended Wheelock College in Boston Massachusetts. I was awarded a Masters of Science degree in Early Childhood Education in 1972.
4. In the summer of 1970, I took one course in teaching reading at D.C. Teachers College.
5. From September 1966 to June 1970, I attended Trinity College, Washington, D.C. I was awarded a B.A. degree in history in 1970.
6. From 1963 to 1966, I attended McKinley High School in Washington, D.C. I received a diploma in 1966.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

1. Washington Metropolitan Area Transit Authority (WMATA),
600 Fifth Street, NW, Washington, D.C. 20001.

June 1987 - April 1989

I was appointed Special Assistant to the
General Manager of WMATA.

September 1986 - January 1987

I served as Acting Special Assistant to the General Manager of WMATA.

2. Law Clerk, District of Columbia Office of Employee Appeals, 515- 12th St., NW, Washington, D.C. 20002, from, 5/82-5/83.
3. Legal Assistant, Howard University Institute for the Study of Educational Policy, 2900 Van Ness Street, NW, Washington, D.C. 20008, from 1-82 to 5-82 and 1-83 to 7-83.
4. Research Assistant, Professors Richard Thornell and Daniel Bernstine, Howard University Law School, 2900 Van Ness Street, NW, Washington 20008, D.C., from 6-81 to 12-81.
5. Law Clerk, Drug Enforcement Administration, Office of the Chief Counsel, Washington, D.C., from 6-80 to 6-81.
6. Legal Assistant in Hopkins & Associates, Washington, D.C., on an as needed basis between 1978-1980.
7. Teacher, Sidwell Friends School, 3825 Wisconsin Ave., NW (Lower School/Bethesda, MD campus) 20016 was my work location), from 9-77 to 6-80.
8. Teacher, District of Columbia Public School - (Malcolm X Elementary School - Alabama Ave., SE, Washington, D.C. 20032, from 6-73 to 6-74 and Coordinator of the Early Childhood Program at Washington Highland Community School - 8th & Yuma Sts., SW, from 6-74 to 6-77. I supervised Kindergarten, PreKindergarten, and Head Start teachers and aides and basically performed the functions of an assistant principal for the early childhood educational component of the elementary school section of the school.
9. Teacher, New City Montessori School, 3120 Nicholson St., Hyattsville, MD., from 9-72 to 6-73.
10. Graduate Assistant, Wheelock College, 200 Riverway, Boston, MA. 02215, from 6-71 to 6-72. I

supervised graduate student teachers who were practice teaching in schools in Boston and the suburban communities and co-taught the weekly student teaching seminar.

11. Teacher Sharon Public School, Sharon MA., from 9-70 to 6-71. I taught reading, language arts, and history to my 5th grade class and another 5th grade class.
 12. I have not served in the US military.
9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
- 1999 - The WMATA 1999 Employee of the Year Award for Independent Offices
1996 - Trinity College Presidential Leadership Award
1991 - WMATA Officer's Award for Special Achievement in 1991
1990 - "Lump Sum Cash Award" in 1990
1983 - Received a J.D. degree cum laude from Howard University Law School
1971-1972 - graduate assistant fellowship at Wheelock College
1970 - Listed in Who's Who in American Colleges
1965-1966 and 1964-1965 - I was elected Senior Class President and Junior Class Vice President of my graduating class at Trinity College.
10. Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.
- From 1991 to 1997, I was a member of the Board of Trustees of Trinity College Washington, D.C. I was a member of the Finance Committee from 1991 until 1996 and chair of the committee from 1994 to 1996. From 1996 to 1997, I was Chair of the Student Interest Committee.
11. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide

titles and dates of any offices which you have held in such groups.

From October 1999 to June 2000, I served on the Committee on Arrangements for the District of Columbia Annual Judicial Conference and organized two of the panels one of which I was a participant, "Attorney Discipline and How to Avoid It." The other panel concerned appellate litigation.

In April 2000, I was appointed Chair of Hearing Committee No. 6 of the Board on Professional Responsibility of the District of Columbia.

In April 1998, I was appointed as a lawyer-alternate hearing committee member of the Board on Professional Responsibility of the District of Columbia

In November 1997, I was appointed to the District of Columbia Court of Appeals Committee on Unauthorized Practice of Law and presently serve on the committee.

In 1998 to the present and 1983, I have been a member of the American Bar Association.

In 1993, I was a member of the Rule 11 panel at the District of Columbia's Annual Judicial Conference. Judge Cheryl Long of the Superior Court of the District of Columbia was the panel chairperson.

In 1988 I worked with the National Association of Black Woman Attorneys and we organized a city-wide meeting between the judges at the Superior Court of the District of Columbia and local minority law students at the home of Mabel Haden, a founding member of the bar group.

I was a member of the Greater Washington Area Charter of the National bar Association from 1996 to 1998, and I was a member in the 1980's.

12. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently

discriminates on the basis of race, sex, or religion.

I am an inactive member of Delta Sigma Theta Sorority. To my knowledge, it does not and has not discriminated on the basis of race, sex, or religion.

13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

I was admitted to practice in the following state courts:
 Nebraska - September 1983
 District of Columbia - December 1984
 Maryland - June 1998.

I was admitted to practice in the following United States courts:
 District Court of Nebraska - 1983
 District Court of the District of Columbia - 1984
 District Court of Maryland - 1995.
 Court of Appeals for the District of Columbia Circuit - 1987
 Court of Appeals for the Fourth Circuit in August 1998.

14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

I have the following publication where I am a coauthor as legal assistant to Professor Tollett: Tollett, Leonard, James, A Color Constitution: One Pervading Purpose REDUX, Journal of Negro Education, 1983.

15. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. Legal career.
 - A. Describe chronologically your law practice and experience after graduation from law school, including:
 - (1) Whether you served as a law clerk to a judge, and

if so, the name of the judge, the court, and the dates of your clerkship;

A

- (1) I was a judicial law clerk for the Honorable Warren R. King from September 1983 until July 1984 at the Superior Court of the District of Columbia. At that time, Judge King's primary assignment was the Felony II calendar. Judge King is now a senior judge at the District of Columbia Court of Appeals.
- (2) Whether you practiced alone, and if so, the addresses and dates;
 - (2) I have not practiced alone.
- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.
 - (3) I have had connections with the following law firm and governmental agencies since I was a judicial law clerk:
 1. Associate, Steptoe and Johnson Law Firm, 1330 Connecticut Avenue, NW, Washington, D.C., from September 1984 to March 1986.
 2. Attorney, Washington Metropolitan Area Transit Authority (WMATA), 600 Fifth Street, NW, Washington, D.C. 20001
 - April 1986 - September 1986,
I served as Assistant General Counsel in the General Law/Appellate Section and the Real Estate Section.
 - September 1986 - January 1987
I served as Acting Special Assistant to the General Manager of WMATA.
 - January 1987 - June 1987
I again served as Assistant General Counsel in the General Law/Appellate Section and the Real Estate Section.
 - June 1987 - April 1989
I was appointed Special Assistant to the

General Manager of WMATA.

April 1989 - April 1996

I served as an Assistant General Counsel in the Civil Litigation Section. In 1992, I was promoted to an Associate General Counsel position in the Civil Litigation Section. As an Associate General Counsel, I was a supervisory attorney in the civil litigation section and I assisted in the training of junior attorneys, including second chairing their trials.

October 1997 - August 1999

I was rehired and worked as Assistant General Counsel in the General Law Section.

August 1999 - present

I was promoted to Associate General Counsel in the General Law Section, serve as Team Leader for Special Projects, and serve as liaison to the Department of Administrative Services. I supervise the work of junior attorneys and substitute for the Principal Deputy General Counsel when requested.

3. Deputy General Counsel, Office of the General Counsel, District of Columbia Housing Authority, 1133 North Capitol Street, NW, Washington, D.C., from April 1986 to September 1997. I was the second in command in the office and I was the first-line supervisor for the four staff attorneys.

B. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

B. Defense representation in civil cases pending trial has been the general character of my practice as described below.

(1) From September 1984 to March 1986, my practice at Steptoe & Johnson involved environmental, intellectual property, corporate, immigration, government contracts, and insurance law. I was involved in some pro bono litigation: drafted an argument in a brief in a death penalty case;

participated as co-counsel in pretrial proceedings in two wrongful death cases involving nursing homes for the elderly; and filed a brief in administrative proceeding on behalf of a Haitian immigrant resisting deportation on a claim of a right to political asylum.

- (2) From April 1986-September 1986 and January 1987-June 1987, my primary practice areas were appellate litigation, employment and real estate law at WMATA. I wrote two appellate briefs and argued one case before the U.S. Court of Appeals for the District of Columbia Circuit. I occasionally appeared in court.
- (3) From April 1989-April 1996, my primary practice area was civil litigation. I was assigned approximately 200 cases, most were settled. The remaining cases were disposed of on summary judgment in favor of WMATA, and the rest were tried. Most were tort cases involving individuals claiming injuries caused by WMATA's personnel, equipment, or facilities. I was the sole attorney in wrongful death cases, including a patron who died while riding an escalator. Additionally, I tried cases involving claims of excessive force, false arrest, and federal constitutional violations by WMATA police officers. Furthermore, I handled several employment discrimination cases, (gender, race, national origin, age, and disability) and cases involving wrongful discharge.
- (4) From April 1996 to September 1997, I was involved with all legal issues at the D.C. Housing Authority, an agency which provides public and assisted housing for indigent and low income residents. In the absence of the General Counsel, I served as Acting General Counsel. The Office of the General Counsel, was in the process of being established. Following the hiring of the General Counsel, I was the second attorney hired. I was delegated the task of recruiting staff which included drafting job descriptions for the following positions: staff attorneys, law clerks, librarian, and secretary. After I selected and interviewed applicants, I made hiring recommendations to the General Counsel. Most of my

work involved legal advice regarding employment, labor, and personnel issues. On a daily basis, I advised the Department of Human Resources and senior management concerning employee discipline and grievances as well as compliance with local and federal employment laws. I also represented the Housing Authority and/or made filings in cases pending before the various District of Columbia government agencies, including the Office of Employee Appeals, the Public Employee Relations Board and the Office of Human Rights. I represented the Housing Authority in proceedings in the Landlord Tenant Court of the Superior Court of the District of Columbia. I also supervised staff attorneys and outside counsel who handled third-party liability lawsuits that were filed against the agency. I participated in labor arbitration hearings and I made filings in the administrative process before the U.S. Equal Employment Opportunity Commission, and in cases pending trial in the U.S. District Court for the District of Columbia. In some cases I was the supervisor of a staff attorney and in other cases I was the sole attorney. Also, I was one of the three member team that represented the Housing Authority during successful contract negotiations with Local 2725 of the American Federation of Government Employees ("AFGE"). At the end of several months of negotiations, most of the terms and conditions of the Housing Authority employees' work were governed by the negotiated contract, not most of the provisions of the D.C. Comprehensive Merit Personnel Act. I also reviewed lease agreements, grant proposals to the U.S. Department of Housing and Urban Development, grant proposals submitted to DCHA, and procurement actions. Last, one attorney whom I supervised handled government contract and procurement matters and I participated in a trial at the D.C. Board of Contract Appeals.

- (5) From September 1997 to the present, I have been working in the General Law Section of the WMATA Office of the General Counsel, I have provided legal advice in many areas of the law including, employment and personnel; commercial and financial transactions, e.g., real estate joint development projects near and at Metrorail stations; first

amendment issues concerning use of WMATA property; responding to public requests for access to WMATA information which are similar to Freedom of Information requests; impact of American with Disabilities Act on WMATA facilities; transit issues; environmental issues; procurement issues; and construction issues. I have drafted and reviewed: personnel policies and regulations, as well as lease and real estate sales agreements. Last, I have supervised outside counsel who successfully defended WMATA in a major government contracts case that was pending trial in the United States District Court for the District of Columbia. Plaintiff sought to have the negotiated contract award set aside and his company awarded the contract.

- C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.
- C. The typical former client was WMATA generally through its bus operators, train operators, management personnel, and equipment and facility maintenance employees.
- D. Describe the general nature of your litigation experience, including:
 - (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.
- D. The nature of my litigation is described below:
 - (1) From 1993 until April 1996, I engaged in civil litigation and trial work at WMATA, and appeared in court frequently. The frequency of my appearance was reduced between April 1996 and September 1997, while I was Deputy General Counsel of the Housing Authority. Since returning to the General Law Section of WMATA's Office of the General Counsel in October 1997, I seldom appear in court. I entered my appearance in two appellate cases and filed one appellate brief with the D.C. Court of Appeals. I supervised outside counsel

who successfully defended WMATA in a major government contracts case in the U.S. District Court for the District of Columbia. My litigation practice has also included defending agencies at administrative hearings, e.g., Public Employee Relations Board and the D.C. Unemployment Compensation Office.

(2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.);
- (a) 34% - Federal Courts
- (b) State courts of record (excluding D.C. courts);
- (b) 1% - one case in the Circuit Court of Maryland for Prince George's County as second chair (pro hoc vice)
- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);
- (c) 64% - Superior Court of the District of Columbia
- (d) other courts and administrative bodies.
- (d) 1% - District of Columbia agencies

(3) What percentage of your litigation has been:

- (a) civil;
- (a) All were civil cases.
- (b) criminal.
- (b) None.

(4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

- (4) I have tried 26 cases to jury verdicts. I was the sole attorney in 18 cases, lead counsel in one case, and associate counsel in the remaining cases. Additionally, Summary Judgment was granted

in favor of WMATA in 17 cases (all were employment cases, except 6).

(5) What percentage of these trials was to

- (a) a jury;
- (a) Jury trials - 99%
- (b) the court (include cases decided on motion but tabulate them separately).
- (b) The court - one Title VII bench trial
- (c) Since April 1998, I was appointed by the D.C. Court of Appeals to serve as a committee member of panels that hear cases involving attorneys charged with violations of the Code of Professional Conduct. In April 2000, I was appointed Chair of Hearing Committee No. 6.

17. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.

- 4. Tillman v. WMATA, et al.
C.A. No. 94-00924
The Honorable Russell F. Canan
Jury trial was held in January 1996.
Superior Court of the District of Columbia
695 A.2d 94 (D.C. App. 1997) (motion for judgment in favor of WMATA was affirmed) (panel - Judges Ferren, Steadman, and King)

Carolyn Elefant
Counsel for Tillman
727 -15th St., NW
Washington, D.C.
(202) 624-9400

I was the sole trial attorney in a case where Tillman sued WMATA and two police officers alleging false arrest, negligence, use of excessive force, and constitutional violations. At the close of Plaintiff's case, the court granted WMATA's motion for judgment. Affirming the trial court's judgment in favor of the officers, the appellate court held that (1) the police officers had constitutional probable cause to arrest Tillman for fare evasion and (2) Tillman failed to establish any standard of care from which the officers deviated to support his negligence and false arrest claims.

This case was significant because it clarified evidentiary issues that often arise in suits brought against WMATA's police officers. First, the court concluded that the intent of the arrestee is irrelevant and should never be considered in determining whether the officer had probable cause to arrest. Second, the court concluded that Plaintiff had failed to present sufficient evidence for the jury to make a determination on the standard of care required of officers charged with negligence or excessive force while handcuffing. The court noted that Tillman failed to offer into evidence police regulations or expert testimony to establish a standard of care. Finally, the case is important because it forecloses the jury speculating on the standard of care required in how to handcuff arrestees.

5. Milone v. WMATA
C.A. No. 93-1227
The Honorable Ricardo M. Urbina
Jury trial was held in April 1995.
U.S. District Court for the District of Columbia
91 F.3d 229 (D.C. Cir. 1997) (reversing a jury verdict in favor of Milone) (panel -Judges Williams, Ginsburg and Sentelle)

Jonathan E. Halperin
 900 -19th St., NW
 Washington, D.C.
 (202) 463-3030

I was sole trial counsel, wrote the appellate brief, and I argued this case on appeal. This negligence case involved an issue of whether there was sufficient evidence to establish that the bus driver had actual or constructive notice of a foreseeable risk of harm to Milone or other riders on the bus created by the passenger departing the bus who struck Milone in the back of her head. In other words, did the bus operator breach a duty of care to protect her from the intervening criminal acts of a third party?

Reversing the jury's verdict, the court adopted WMATA's argument that foreseeability is required in order to impose liability against WMATA in cases where the intervening criminal conduct of third parties caused injuries to its patrons. The court went on to distinguish the Milone case from another passenger assault case, O'Neil v. WMATA, 633 A.2d 834 (D.C. App. 1993). Furthermore the court agreed with WMATA that the facts of Milone were different from O'Neil. In O'Neil, intoxicated passengers walked up and down the bus aisle yelling obscenities and threatening remarks and making menacing faces at other passengers before they struck an elderly passenger. Moreover, the bus operator was aware of this threatening behavior and did nothing to abate the conduct. The standard of foreseeability of harm to passengers was not met in Milone. In Milone, there was no evidence that any passengers, including Milone, reported any threatening behavior prior to Milone being struck.

This was a significant case for WMATA in light of the O'Neil decision which had been interpreted by some plaintiffs to require WMATA to be an insurer of the safety of its passengers under any circumstances. Milone is an important case to WMATA's defense that there is a limitation on the duty of care required of WMATA when there is intervening criminal conduct. In particular, the court rejected Milone's reliance on WMATA's regulations concerning the use of a silent alarm system and the flashing lights on the bus inasmuch as she failed to establish that the atmosphere on the bus called for use of these warning devices by

the bus operator.

Given the vacuum left by Milone's failure to adequately establish the atmosphere on the bus, the court concluded that the Milone jury should not have been allowed to speculate about whether foreseeable harm to passengers existed.

6. Office and Professional Employees International Union, Local 2 v. WMATA
C.A. No. 89-1264
Judge Oliver Gasch
U.S. District Court for the District of Columbia
WL 174892 (D.D.C.)

Joseph E. Finley
Attorney for Local 2
4201 Underwood Road
Baltimore Md. 21291
(410) 366-4366

I was the sole attorney assigned to this employment case involving WMATA's contention that an employee's earnings during a period of discharge should reduce the amount of back pay awarded when an arbitrator orders reinstatement. Judge Gash granted WMATA's motion for summary judgment. A contrary ruling would have created substantial monetary exposure for WMATA over the years. This could have caused a critical drain on WMATA's financial resources inasmuch as it was self-insured for employment judgments and awards.

7. Sanguesa v. WMATA
C.A. No. 89-3475
The Honorable John Garrett Penn
U.S. District Court for the District of Columbia
Trial was in January 1992.

Allen M. Hutter
Counsel for Plaintiff
1115 Massachusetts Ave. NW
(202) 289-0900

I was the sole attorney in a negligence trial where the jury returned a verdict in favor of WMATA. Plaintiff alleged that she was attacked in a WMATA Metrorail Station by a fellow passenger after they immediately departed the train onto the platform. Despite her

screams, she claimed that no Station Manager on duty assisted her. The two Station Managers denied hearing or seeing any unusual events on the night of the incident.

This case was significant because Sanguesa claimed extensive medical, dental, and psychological injuries. Examination of several expert witnesses by the parties was critical to proving and defending liability and damages. Moreover, the layout and size of the station were critical to the issue of liability. During trial, the jury was escorted to the station by the U. S. Marshals for a site viewing as part of the evidence admitted.

8. Sanders v. WMATA
819 F.2d 1151 (D.C. Cir. 1987) (panel -Ruth Ginsburg, Buckley, and Davis)

Marc Fiedler
Counsel for Appellants
2020 K Street, NW
(202) 659-5500

I argued this case on appeal. The brief was written by me and another attorney. In this case, bus and rail operating employees challenged discipline imposed on them after testing positive for illicit drugs and alcohol. WMATA had rules and procedures which required testing after an employee was involved in on-the-job accidents and certain incidents. Affirming the lower court's grant of summary judgment in favor of WMATA, the court of appeals held that the establishment of drug testing policies and procedures were governmental functions for which WMATA had governmental immunity from suit.

This case was significant because this was the first time that this court analyzed WMATA's sovereign immunity defense in an employment case. Furthermore, this is a significant case because one of WMATA's missions is to operate the transit system in as safe a manner as possible. In accomplishing this goal, WMATA promulgated policies, rules and regulations governing drug use which is critical to safety. WMATA argued that those were governmental functions which involved the exercise of discretion by the Board of Directors and/or senior management. Any challenge to such

governmental activities impedes the agency's ability to carry out its mission safely under the WMATA Compact, its enabling statute.

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

1. Negotiating a contract with AFGE at the District of Columbia Housing Authority ("DCHA") was one of the most significant legal activity that I have pursued.

Under both the enabling statute of DCHA and the DCHA receivership order, a new personnel system was mandated. One of the goals in establishing a new personnel system was to incorporate the current terms and conditions of the work environment into the next negotiated collective bargaining agreement ("CBA") between DCHA and AFGE, Local 2725. At the end of several months of negotiations, most of the terms and conditions of the employees' work were governed by the new collective bargaining agreement ("CBA"), not most of the provisions of the D.C. Comprehensive Merit Personnel Act. Management's goal was to streamline the discipline and grievance procedures. The union's goal was to preserve and enhance rights of various categories of employees. Both were achieved in the CBA.

This legal activity was significant because the new CBA was expected to lead to improved labor-management relationships and ultimately enhance the receivership's goal of improving the housing stock of public and assisted housing. Last, the negotiation team developed a training manual and conducted seminars about the new CBA for supervisors and senior management.

2. Another most significant legal activity has involved my role as the WMATA Work/Life Team Leader. I have had an opportunity to research the legal issues involved in the establishment of several work/life policies/initiatives that have improved the family and work life of WMATA employees. Through our team work

and the Executive Staff's concurrence, the Board of Directors has approved the implementation of Alternative Work Schedules, Compensatory Time Office for Fair Labor Standards Act exempt employees, the establishment of an Emergency/Backup Child Care program, and domestic partner benefits. Other work/life initiatives such as Teleworking and Long Care Health insurance are scheduled for the Board of Directors' action in the year 2002.

The legal work performed was significant in playing a role in the establishment of policies that improve employees' family/personal and work life. The Board of Directors now includes Work/Life initiatives as an agenda item for its Human Resource Committee meetings.

19. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.

- A. List all court decisions you have made which were reversed or otherwise criticized on appeal.

I have not had any judicial service.

20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

I have not been a candidate for elective, judicial, or any other public office.

21. Political activities and affiliations.

- a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.
- a. During the 1966-67 time frame, I was elected Recording Secretary for the Young Democrats of Washington, D.C.

- b. List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.
 - b. None.
 - c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.
 - c. None.
22. To your knowledge, have you ever been investigated, arrested, charged, or convicted (include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.
- No.
23. Have you or any business of which you are or were a officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.
- No.
24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.
- A complaint was filed by a pro se mentally disturbed plaintiff with Bar Counsel in 1992, D186-92. She had filed a lawsuit against my employer, WMATA. After a display of several incidents of unusual behavior, Judge Cheryl Long ordered a psychiatric examination. Afterwards, Judge Long issued a memorandum dismissing the personal injury case because plaintiff was found to be incompetent to participate

in the trial proceedings. The complaint was investigated by Elizabeth J. Branda, now Executive Attorney for the Board on Professional Responsibility of the District of Columbia (Board), and it was dismissed. No proceedings were held. There was no merit to plaintiff's complaints that I acted in an unprofessional manner in connection with drafting the Joint Pretrial Statement. A paralegal was present at the meeting with the plaintiff to prepare the joint pretrial statement who prepared an affidavit that rebutted plaintiff's allegations against me.

II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

As a WMATA employee for 14 years, I am a participant in a WMATA Defined Retirement Benefits Plan which is based on the employee's years of service and the average salary high over the most recent 36 months of service prior to retirement. WMATA makes the sole contributions to the Plan for employees and we are not allowed to withdraw funds until retirement. I am vested in the WMATA Retirement Plan and will receive a defined benefit retirement payment starting at age 65. The amount of the pay is unknown.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.

WMATA, my employer, has cases pending in the Superior Court of the District of Columbia, I do not.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.

None.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

No.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I would follow the Code of Judicial Conduct in the resolution of any conflict of interest or appearance of conflict of interest.

8. If confirmed, do you expect to serve out your full term?

Yes.

III. FINANCIAL DATA

The Answers to the Financial portion of the Questionnaire are available for inspection in SD-340.

IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section I I - 150 1 (b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. I was admitted to practice in the District of Columbia in December 1984.

4. If the answer to Question 3 is "no" --

1. Are you a professor of law in a law school in the

District of Columbia?

N/A.

2. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?

N/A.

3. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?

N/A.

4. Upon what grounds is that eligibility based?

N/A

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

I was born in Washington, D.C., and have lived in Washington, D.C. for approximately 48 years. From September 1996 to the present, I have lived at Washington, D.C. From birth, 3-2-48, until 5-93 (except for the 2 years that I lived in Boston, MA), I lived in Washington, D.C. After living in Maryland between 5-93 to 9-96, I resumed living in Washington, D.C. in September 1996. At that time, we purchased our present residence.

7. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

8. Have you been a member of either of these Commissions within

the

last 12 months?

No.

9. Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.

Copies are attached, Attachment 5.

AFFIDAVIT

Jeanette J. Clark being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Jeanette J. Clark
SUBSCRIBED and SWORN TO before me this 13th day of December 2001.

Rose M. Remund
Notary Public
My Commission Expires February 28, 2005.